

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 SHARONE RANDOLPH,  
5 Plaintiff,  
6 v.  
7 ANDREW SAUL<sup>1</sup>,  
8 Acting Commissioner of Social Security,  
9 Defendant.

2:18-cv-00555-CLB

**ORDER**

10 This case involves the judicial review of an administrative action by the  
11 Commissioner of Social Security (“Commissioner”) denying Sharone Randolph’s  
12 (“Randolph”) application for disability insurance benefits and supplemental security  
13 income pursuant to Titles II and XVI of the Social Security Act. Currently pending before  
14 the Court is Randolph’s motion for reversal or remand. (ECF No. 15.) In this motion,  
15 Randolph seeks the reversal of the administrative decision and remand for an award of  
16 benefits. (*Id.*) The Commissioner filed a response and cross-motion to affirm (ECF No.  
17 23), and no reply was filed. Having reviewed the pleadings, transcripts, and the  
18 Administrative Record (“AR”), the Court concludes that the Commissioner’s decision is  
19 supported by substantial evidence. Therefore, the Court denies Randolph’s motion for  
20 reversal and/or remand, (ECF No. 15), and grants the Commissioner’s cross-motion to  
21 affirm, (ECF No. 23).

22 **I. STANDARDS OF REVIEW**

23 A. Judicial Standard of Review

24 This Court’s review of administrative decisions in social security disability benefits  
25 cases is governed by 42 U.S.C. § 405(g). See *Akopyan v. Barnhart*, 296 F.3d 852, 854  
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28 <sup>1</sup> Andrew Saul is now the Commissioner of Social Security and is automatically  
substituted as a party pursuant to Fed. R. Civ. P. 25(d).

1 (9th Cir. 2002). Section 405(g) provides that “[a]ny individual, after any final decision of  
2 the Commissioner of Social Security made after a hearing to which he was a party,  
3 irrespective of the amount in controversy, may obtain a review of such decision by a civil  
4 action ... brought in the district court of the United States for the judicial district in which  
5 the plaintiff resides.” The Court may enter, “upon the pleadings and transcript of the  
6 record, a judgment affirming, modifying, or reversing the decision of the Commissioner of  
7 Social Security, with or without remanding the cause for a rehearing.” *Id.*

8 The Court must affirm an Administrative Law Judge’s (“ALJ”) determination if it is  
9 based on proper legal standards and the findings are supported by substantial evidence  
10 in the record. *Stout v. Comm’r Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006); see  
11 also 42 U.S.C. § 405(g) (“findings of the Commissioner of Social Security as to any fact,  
12 if supported by substantial evidence, shall be conclusive”). “Substantial evidence is more  
13 than a mere scintilla but less than a preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211,  
14 1214 n.1 (9th Cir. 2005) (internal quotation marks and citation omitted). “It means such  
15 relevant evidence as a reasonable mind might accept as adequate to support a  
16 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842  
17 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229, 59 S.Ct. 206, 83  
18 L.Ed. 126 (1938)); see also *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005).

19 To determine whether substantial evidence exists, the Court must look at the  
20 administrative record as a whole, weighing both the evidence that supports and  
21 undermines the ALJ’s decision. *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995)  
22 (citation omitted). Under the substantial evidence test, a court must uphold the  
23 Commissioner’s findings if they are supported by inferences reasonably drawn from the  
24 record. *Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).  
25 “However, if evidence is susceptible of more than one rational interpretation, the decision  
26 of the ALJ must be upheld.” *Shalala*, 50 F.3d at 749 (citation omitted). The ALJ alone is  
27 responsible for determining credibility and for resolving ambiguities. *Meanel v. Apfel*, 172  
28 F.3d 1111, 1113 (9th Cir. 1999).

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2 It is incumbent on the ALJ to make specific findings so that the court does not  
3 speculate as to the basis of the findings when determining if substantial evidence supports  
4 the Commissioner's decision. The ALJ's findings should be as comprehensive and  
5 analytical as feasible and, where appropriate, should include a statement of subordinate  
6 factual foundations on which the ultimate factual conclusions are based, so that a  
7 reviewing court may know the basis for the decision. See *Gonzalez v. Sullivan*, 914 F.2d  
8 1197, 1200 (9th Cir. 1990).

9 B. Standards Applicable to Disability Evaluation Process

10 The individual seeking disability benefits bears the initial burden of proving  
11 disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the  
12 individual must demonstrate the "inability to engage in any substantial gainful activity by  
13 reason of any medically determinable physical or mental impairment which can be  
14 expected ... to last for a continuous period of not less than 12 months." 42 U.S.C. §  
15 423(d)(1)(A). More specifically, the individual must provide "specific medical evidence" in  
16 support of her claim for disability. See 20 C.F.R. § 404.1514. If the individual establishes  
17 an inability to perform her prior work, then the burden shifts to the Commissioner to show  
18 that the individual can perform other substantial gainful work that exists in the national  
19 economy. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).

20 The first step requires the ALJ to determine whether the individual is currently  
21 engaging in substantial gainful activity ("SGA"). 20 C.F.R. §§ 404.1520(b), 416.920(b).  
22 SGA is defined as work activity that is both substantial and gainful; it involves doing  
23 significant physical or mental activities, usually for pay or profit. 20 C.F.R. §§ 404.1572(a)-  
24 (b), 416.972(a)-(b). If the individual is currently engaging in SGA, then a finding of not  
25 disabled is made. If the individual is not engaging in SGA, then the analysis proceeds to  
26 the second step.

27 The second step addresses whether the individual has a medically determinable  
28 impairment that is severe or a combination of impairments that significantly limits her from

1 performing basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). An impairment or  
2 combination of impairments is not severe when medical and other evidence establish only  
3 a slight abnormality or a combination of slight abnormalities that would have no more than  
4 a minimal effect on the individual's ability to work. 20 C.F.R. §§ 404.1521, 416.921; Social  
5 Security Rulings ("SSRs") 85-28 and 96-3p.1 If the individual does not have a severe  
6 medically determinable impairment or combination of impairments, then a finding of not  
7 disabled is made. If the individual has a severe medically determinable impairment or  
8 combination of impairments, then the analysis proceeds to the third step.

9 The third step requires the ALJ to determine whether the individual's impairment or  
10 combination of impairments meets or medically equals the criteria of an impairment listed  
11 in 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525,  
12 404.1526, 416.920(d), 416.925, 416.926. If the individual's impairment or combination of  
13 impairments meets or equals the criteria of a listing and meets the duration requirement  
14 (20 C.F.R. §§ 404.1509, 416.909), then a finding of disabled is made. 20 C.F.R. §§  
15 404.1520(h), 416.920(h). If the individual's impairment or combination of impairments  
16 does not meet or equal the criteria of a listing or meet the duration requirement, then the  
17 analysis proceeds to the next step.

18 Prior to considering step four, the ALJ must first determine the individual's residual  
19 functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). The RFC is a function-  
20 by-function assessment of the individual's ability to do physical and mental work-related  
21 activities on a sustained basis despite limitations from impairments. SSR 96-8p. In making  
22 this finding, the ALJ must consider all of the symptoms, including pain, and the extent to  
23 which the symptoms can reasonably be accepted as consistent with the objective medical  
24 evidence and other evidence. 20 C.F.R. §§ 404.1529 and 416.929; SSRs 96-4p, 96-7p.  
25 To the extent that objective medical evidence does not substantiate statements about the  
26 intensity, persistence, or functionally-limiting effects of pain or other symptoms, the ALJ  
27 must make a finding on the credibility of the individual's statements based on a  
28 consideration of the entire case record. The ALJ must also consider opinion evidence in

1 accordance with the requirements of 20 C.F.R. §§ 404.1527 and 416.927 and SSRs 96-  
2 2p, 96-5p, 96-6p, and 06-3p.

3 After making the RFC determination, the ALJ must then turn to step four in order to  
4 determine whether the individual has the RFC to perform her past relevant work ("PRW").  
5 20 C.F.R. §§ 404.1520(f), 416.920(f). PRW means work performed either as the individual  
6 actually performed it or as it is generally performed in the national economy within the last  
7 15 years or 15 years prior to the date that disability must be established. In addition, the  
8 work must have lasted long enough for the individual to learn the job and performed at  
9 SGA. 20 C.F.R. §§ 404.1560(b), 404.1565, 416.960(b), 416.965. If the individual has the  
10 RFC to perform her past work, then a finding of not disabled is made. If the individual is  
11 unable to perform any PRW or does not have any PRW, then the analysis proceeds to the  
12 fifth and last step.

13 The fifth and final step requires the ALJ to determine whether the individual is able  
14 to do any other work considering her RFC, age, education, and work experience. 20 C.F.R.  
15 §§ 404.1520(g), 416.920(g). If she is able to do other work, then a finding of not disabled  
16 is made. Although the individual generally continues to bear the burden of proving  
17 disability at this step, a limited evidentiary burden shifts to the Commissioner. The  
18 Commissioner is responsible for providing evidence that demonstrates that other work  
19 exists in significant numbers in the national economy that the individual can do. *Lockwood*  
20 *v. Comm'r, Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010).

## 21 **II. CASE BACKGROUND**

### 22 **A. Procedural History**

23 Randolph applied for disability insurance benefits ("DIB") and supplemental security  
24 income ("SSI") on April 29, 2014 with an alleged disability onset date of April 9, 2013.  
25 (Administrative Record ("AR") 175-189.) The application was denied initially (AR 90-94),  
26 and on reconsideration. (AR 96-99.) Randolph subsequently requested an administrative  
27 hearing. (AR 104.)

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1 On August 11, 2016, Randolph appeared, with counsel, at a hearing before ALJ  
2 Norman Bennett. (AR 36-57.) Ronald Hatakeyama, a vocational expert (“VE”), also  
3 appeared at the hearing. (*Id.*) The ALJ issued a written decision on September 2, 2016,  
4 finding that Randolph had not been disabled at any time between the alleged onset date  
5 and the date of the decision. (AR 23-30.) Randolph appealed, and the Appeals Council  
6 denied review on January 25, 2018. (AR 1-7.) Accordingly, the ALJ’s decision became  
7 the final decision of the Commissioner. Having exhausted all administrative remedies,  
8 Randolph filed a complaint for judicial review on August 14, 2018. (ECF No. 1-1.)

9 B. ALJ’s Decision

10 In the written decision, the ALJ followed the five-step sequential evaluation process  
11 set forth in 20 C.F.R. §§ 404.1520 and 416.920. (AR 23-30.) Ultimately, the ALJ disagreed  
12 that Randolph had been disabled from April 9, 2013, the alleged onset date, through the  
13 date of the ALJ’s decision. (*Id.* at 29-30.) The ALJ held that, based on Randolph’s RFC,  
14 age, education, and work experience, there were jobs in the national economy that she  
15 could perform. (*Id.* at 29.)

16 In making this determination, the ALJ started at step one. Here, the ALJ found  
17 Randolph had not engaged in substantial gainful activity from the alleged onset date of  
18 April 9, 2013. (*Id.* at 25.) At step two, the ALJ found Randolph had the following medically  
19 determinable impairments: degenerative disc disease of the cervical spine, hypertension,  
20 seizure disorder, headaches and bipolar disorder. (*Id.*) The ALJ found that these  
21 impairments constituted more than slight abnormalities and have had more than a minimal  
22 effect on Randolph’s ability to perform basic work activities for a continuous period of 12  
23 months. (*Id.*) At step three, the ALJ found Randolph did not have an impairment or  
24 combination of impairments that either met or medically equaled the severity of those  
25 impairments listed in 20 C.F.R. Part 404, Subpart P, Appx. 1; 20 C.F.R. §§ 404.1520(d),  
26 404.1525, 404.1526, 416.920(d), 416.925, and 416.926. (*Id.*)

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1 Next, the ALJ determined Randolph had an RFC to do the following:

2 lift and/or carry twenty pounds occasionally, ten pounds frequently, stand  
3 and/or walk for six hours in an eight-hour workday and sit for six hours in an  
4 eight-hour workday. She could occasionally climb ladders, ropes, scaffolds,  
5 ramps and stairs, balance, stoop, kneel, crouch and crawl. She needed to  
avoid work around heights or dangerous moving machinery, and was limited  
to simple, repetitive tasks.

6 (*Id.* at 26-28.)

7 The ALJ found the objective findings in this case failed to provide strong support  
8 for Randolph's allegations of disabling symptoms and limitations, and the medical findings  
9 did not support the existence of limitations greater than those included in the decision. (*Id.*  
10 at 27.) The record reflected significant gaps in her history of treatment, and despite her  
11 allegation of disability since April 2013, the record revealed no evidence of any treatment  
12 until May 2014, more than a year after the alleged onset date, with only three visits in  
13 2014. (*Id.*) In reaching this conclusion, the ALJ reviewed and discussed the objective  
14 medical evidence, medical opinions, and factors weighing against Randolph's credibility.  
15 (*Id.* at 26-28.)

16 The ALJ then determined that Randolph was not able to perform past relevant work.  
17 (*Id.* at 28.) The VE, responding to a hypothetical indicating Randolph's RFC posed by  
18 the ALJ, compared the requirements of Randolph's PRW to her restrictions and found that  
19 Randolph was not capable of performing the PRW. (*Id.*) Further, the ALJ found that even  
20 if Randolph was not capable of performing any past relevant work, there are other jobs  
21 that exist in significant numbers in the national economy that she is also able to perform.  
22 (*Id.* at 29.) Thus, proceeding to step five, and relying on the testimony of the VE, the ALJ  
23 determined that Randolph's age, education, work experience, and RFC would allow her  
24 to perform occupations existing in significant numbers in the national economy, such as:  
25 office helper, assembler, and sales attendant. (*Id.*) Accordingly, the ALJ held that  
26 Randolph had not been under a disability from April 9, 2013, the alleged onset date,  
27 through September 2, 2016, the date of the ALJ's decision, and denied her DIB and SSI  
28 claim. (*Id.* at 29-30.)

### III. ISSUES

Randolph seeks judicial review of the Commissioner's final decision denying her DIB and SSI under Titles II and XVI of the Social Security Act. (ECF No. 15.) Randolph raises the following issues for this Court's review:

1. Whether the ALJ properly rejected the opinion of Randolph's treating Advance Practice Registered Nurse ("APN"); and,
2. Whether the ALJ properly rejected Randolph's testimony regarding pain, symptoms, and level of limitation.

### IV. DISCUSSION

#### A. Opinion of Judith Larkin, APN

Randolph argues the ALJ improperly rejected the opinion of her treating APN, Judith Larkin ("Larkin") by failing to specifically explain any of the regulatory factors used to evaluate the opinions of acceptable medical sources, even though an APN is not generally considered to be an acceptable medical source. (ECF No. 15 at 5, 7.) Randolph also states that the ALJ failed to specifically explain how Larkin's opinion was unsupported by the record because the ALJ's opinion did not articulate a single, specific and germane reason for rejecting her opinion. (*Id.* at 8.)

There are three types of medical opinions (treating, examining, and non-examining) and each type is accorded different weight. See *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009); *Lester v. Chater*, 81 F.2d 821, 830-31 (9th Cir. 1996). Generally, more weight is given to the opinion of a treating source than the opinion of a doctor who did not treat the claimant. See *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014); *Turner v. Comm'r of Soc. Sec. Admin.*, 613 F.3d 1217, 1222 (9th Cir. 2010); *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir. 1987). Medical opinions and conclusions of treating physicians are accorded special weight because these physicians are in a unique position to know claimants as individuals, and because the continuity of their dealings with claimants enhances their ability to assess claimants' problems. See *Fubrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988); *Winans*, 853 F.2d at 647; see also *Bray v. Comm'r of*



1 Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir. 2009) (“A treating physician’s opinion is  
2 entitled to ‘substantial weight.’”). “The ALJ must consider all medical opinion evidence.”  
3 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (citing 20 C.F.R. §  
4 404.1527(b)). “Where an ALJ does not explicitly reject a medical opinion or set forth  
5 specific, legitimate reasons for crediting one medical opinion over another, he errs.”  
6 *Garrison*, 759 F.3d at 1012.

7 “[A]n [ALJ] may disregard medical opinion that is brief, conclusory, and  
8 inadequately supported by clinical findings.” *Britton v. Colvin*, 787 F.3d 1011, 1012 (9th  
9 Cir. 2015) (per curiam); see also *Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014).  
10 However, “only licensed physicians and certain other qualified specialists are considered  
11 ‘[a]cceptable medical sources.’” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012)  
12 (quoting 20 C.F.R. § 404.1513(a)). Nurse practitioners and physician assistants are not  
13 considered acceptable medical sources and are instead defined as “other sources” that  
14 are not entitled to the same deference as acceptable medical sources. See *Dale v. Colvin*,  
15 823 F.3d 941, 943 (9th Cir. 2016); *Britton*, 787 F.3d at 1013; *Molina*, 674 F.3d at 1104.  
16 “An ALJ may discount the opinion of an ‘other source,’ such as a nurse practitioner, if she  
17 provides ‘reasons germane to each witness for doing so.’” *Popa v. Berryhill*, 872 F.3d 901,  
18 906 (9th Cir. 2017) (citation omitted).

19 Under certain circumstances, the opinion of a treating provider who is not an  
20 acceptable medical source may be given greater weight than the opinion of  
21 a treating provider who is—for example, when the provider ‘has seen the  
22 individual more often than the treating source, has provided better  
supporting evidence and a better explanation for the opinion, and the opinion  
is more consistent with the evidence as a whole.’

23 *Revels v. Berryhill*, 874 F.3d 648, 655 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(f)(1)).

24 “If a treating provider’s opinions are based to a large extent on an applicant’s self-  
25 reports and not on clinical evidence, and the ALJ finds the applicant not credible, the ALJ  
26 may discount the treating provider’s opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th  
27 Cir. 2014) (internal quotation marks omitted).  
28

1 Here, the bulk of the administrative record consists primarily of Randolph's own  
2 subjective statements as to her condition (AR 209, 219, 229-33, 234-41, 244-51) and the  
3 progress notes of Larkin, an APN who works for Desert Neurology with neurologist, Dr.  
4 Venkat Veerappan. (AR 313-15, 316-18, 319-21, 353-55, 359-61, 362-64, 365-66, 368-  
5 69, 393-95, 396-98.) In this case, the ALJ assigned little weight to Larkin's opinion as to  
6 Randolph's RFC because Larkin was not an acceptable medical source as defined by 20  
7 C.F.R. §§ 404.1513(a) and 416.913(a) and the record as a whole did not support Larkin's  
8 statement that Randolph's impairments were so severe as to be disabling. (AR 28.)  
9 Specifically, the ALJ noted that the RFC assessment by Larkin found in August 2016 that  
10 Randolph could lift and/or carry five to ten pounds, she needed frequent rest with standing,  
11 and could sit for two hours. (*Id.*; see also AR 387-92.) Randolph could frequently reach  
12 up above her shoulders, reach down to waist level and towards floor, carefully handle  
13 objects, and handle with fingers. (*Id.*) Randolph would have difficulty with bending,  
14 squatting, kneeling and turning any parts of the body and would be unable to continue or  
15 resume work at current or previous employment. (*Id.*) Larkin also found that Randolph's  
16 disability was not likely to change and that she would not be returning to work. (*Id.*) The  
17 two primary complaints addressed by Larkin in the RFC related to Randolph's headaches  
18 and neck pain. (AR 387, 389, 391.) The ALJ properly noted that although Randolph  
19 received treatment for the allegedly disabling headaches, that treatment was routine and  
20 conservative in nature, consisting of medication and Randolph was consistently in no  
21 acute distress, with intact sensation and normal cerebellar testing. (AR 27.) An MRI of  
22 Randolph's brain in January 2015 was also normal. (*Id.*; AR 324.)

23 Likewise, the ALJ found that although Randolph's June 2015 MRI of her cervical  
24 spine revealed moderately narrowed AP dimension of the entire cervical canal, minimal  
25 disc bulges at C4-C5 and C5-C6, the record revealed Randolph failed to mention her  
26 allegedly disabling neck pain on multiple occasions. (AR 27.) The ALJ stated that  
27 treatment notes also revealed normal musculoskeletal examination, with normal bulk, tone  
28 and strength throughout, and did not otherwise reveal any significant findings that would

1 support Randolph's allegation of disabling neck pain. (*Id.*) For the reasons stated below,  
2 the Court finds that the ALJ's findings are supported by substantial evidence in the record.

3 Randolph's first visit to Desert Neurology was on November 20, 2014, upon referral  
4 from Dr. Barolone for her headaches. (AR 297-99). Randolph complained of having  
5 headaches off and on since 2002, about three times per day, and claimed to have been  
6 diagnosed with cluster headaches. (AR 297.) Randolph asserted she would sometimes  
7 not have a headache for one to two months at a time, but then they would come back.  
8 (*Id.*) Randolph's headaches were mainly on the right side of her head, and she was  
9 sensitive to sound and has visual aura and some nausea, but no vomiting or dizziness.  
10 (*Id.*) The doctor reviewed Randolph's symptoms and found she was negative for loss of  
11 consciousness, confusion, speech abnormalities, weakness, paresthesias, visual or  
12 hearing or taste changes, convulsions, tremors, bowel/bladder incontinence, neck/back  
13 pain, or imbalance/incoordination. (*Id.*) Randolph made no mention of neck pain during  
14 this initial visit. (*Id.*)

15 During the physical examination the doctor noted that although Randolph  
16 complained of having a headache "right now," she was in no acute distress, awake, alert  
17 and oriented, and her speech, cognition, mood and affect were all within normal limits, as  
18 were her sense of smell, taste and hearing, and her cerebellar examination. (AR 297-98.)  
19 Additionally, the doctor noted that Randolph's head/neck rotation and shoulder shrugging  
20 was intact, with normal bulk, tone and strength throughout. (AR 298.) The doctor's  
21 assessment of Randolph's conditions included migraine with aura and cluster headaches  
22 and other trigeminal autonomic cephalgias. (*Id.*) The doctor ordered a brain MRI without  
23 contrast and prescribed Fioricet and Verapamil. (*Id.*)

24 Randolph's second visit to Desert Neurology occurred on January 14, 2015. (AR  
25 370-71.) Randolph reported no changes in her daily headaches and that she had stopped  
26 taking the Verapamil because "it does not make her feel well"; nor did she indicate having  
27 any type of neck pain. (*Id.*) She continued on the Floricet and benefitted from the  
28 medication. (*Id.*) The physical examination notes were normal, and essentially the same

1 as the November 2014 visit. (AR 370-71.) The MRI of Randolph's brain as of January 28,  
2 2015 was also normal. (AR 324.)

3 Randolph began seeing Larkin, APN, on February 17, 2015, following the  
4 completion of the brain MRI. (AR 368-69.) Randolph stated that she continued to have  
5 her migraines and that lately they had been severe after it hits, lasting for 55 minutes long.  
6 (AR 368.) Again, Randolph made no mention of neck pain during this visit. (*Id.*) Larkin's  
7 physical examination notes stated that, again, Randolph was not in acute distress and her  
8 overall examination was completely normal, as was the musculoskeletal examination, with  
9 a normal bulk, tone and strength throughout. (AR 368-69.) Larkin added "tension type  
10 headache" to her assessment of Randolph's conditions and prescribed Norco 5 mg for  
11 headaches. (AR 369.) Randolph saw Larkin eight times from February 2015 through  
12 August 2016. (AR 362-64, 359-361, 319-321, 313-15, 322-23, 353-55, 396-98, 393-95.)  
13 At each visit Randolph's primary complaint was related to head pain/headaches, but not  
14 neck pain. (See *id.*) Larkin's physical examination notes consistently stated Randolph was  
15 not in acute distress and her overall examinations were normal, as were her  
16 musculoskeletal examinations, with a normal bulk, tone, and strength throughout. (*Id.*)  
17 Further, aside from one occasion, Randolph's medications remained unchanged  
18 throughout her treatment with Larkin. (*Id.*)

19 As Randolph acknowledges, Larkin was not an acceptable medical source. (ECF  
20 No. 15 at 6-7.) As such, the ALJ need only provide germane reasons for rejecting Larkin's  
21 opinion. See 20 C.F.R. § 404.1513(a) ("acceptable medical sources include licensed  
22 physicians and psychologists); 20 C.F.R. § 404.1513(d)(1) (nurse practitioners are "other  
23 sources"). As the Commissioner correctly states, the ALJ properly afforded little weight to  
24 Larkin's opinion because she was not an acceptable medical source and the record as a  
25 whole did not support the severe limitations assessed by Larkin. (AR 28). None of Larkin's  
26 treatment records indicate any sort of total disability from either Randolph's headaches or  
27 alleged neck pain. While Larkin indicated that Randolph would need frequent rest periods,  
28 no explanation or support for her assessment is provided and the limitation is not evident

1 from Randolph's normal physical examination findings. (ECF No. 23 at 5.) Additionally,  
2 the ALJ stated that Larkin's recommended limitation to sedentary exertional capacity was  
3 not supported by her treatment notes, which revealed normal musculoskeletal  
4 examination with normal bulk, tone, and strength throughout. (AR 27.) Accordingly, the  
5 Court finds that the ALJ provided germane reasons for assigning little weight to Larkin's  
6 opinion.

7       B.     Adverse Credibility Finding

8       Randolph argues the ALJ improperly rejected Randolph's testimony concerning  
9 pain, symptom and level of limitation due to significant gaps in her treatment history and  
10 her routine and conservative treatment. (ECF No. 15 at 8-12.) An ALJ engages in a two-  
11 step analysis to determine whether a claimant's testimony regarding subjective pain or  
12 symptoms is credible. "First, the ALJ must determine whether there is objective medical  
13 evidence of an underlying impairment which could reasonably be expected to produce the  
14 pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks  
15 omitted). "The claimant is not required to show that her impairment could reasonably be  
16 expected to cause the severity of the symptom she has alleged; she need only show that  
17 it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572  
18 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

19       Second, "[i]f the claimant meets the first test and there is no evidence of  
20 malingering, the ALJ can only reject the claimant's testimony about the severity of the  
21 symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection."  
22 *Ghanim v. Colvin*, 763 F.3d 1154m 1163 (9th Cir. 2014) (quoting *Lingenfelter v. Astrue*,  
23 504 F.3d 1028, 1036 (9th Cir. 2007)). "General findings are insufficient; rather, the ALJ  
24 must identify what testimony is not credible and what evidence undermines the claimant's  
25 complaints." *Id.* (quoting *Lester*, 81 F.3d at 834); *Thomas v. Barnhart*, 278 F.3d 947, 958  
26 (9th Cir. 2002) ("[T]he ALJ must make a credibility determination with findings sufficiently  
27 specific to permit the court to conclude that the ALJ did not arbitrarily discredit claimant's  
28 testimony.").

1 In making an adverse credibility determination, the ALJ may consider, *inter alia*, (1)  
2 the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's testimony  
3 or between her testimony and her conduct; (3) the claimant's daily living activities; (4) the  
4 claimant's work record; and, (5) testimony from physicians or third parties concerning the  
5 nature, severity, and effect of the claimant's condition. *Thomas*, 278 F.3d at 958-59.  
6 Subjective testimony cannot be rejected solely because it is not corroborated by objective  
7 medical findings, but medical evidence is a relevant factor in determining the severity of a  
8 claimant's impairments. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *see also*  
9 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

10 Randolph alleged disability due to degenerative disk disease of the cervical spine,  
11 hypertension, seizure disorder, headaches, and bipolar disorder. (*Id.* at 26-27; *see also*  
12 AR 209, 234-41.) She alleged that she stopped working in April 2013 due to her condition,  
13 complaining of daily headaches, sometimes two to three times a day. (*Id.*) Randolph  
14 claimed that she had difficulty with personal care, did not prepare meals, perform  
15 household chores, or spend time with others. (*Id.*) She alleged difficulty with lifting,  
16 standing, reaching, walking, sitting, talking, hearing, stair climbing, seeing, memory,  
17 completing tasks, concentration, understanding, following instructions and getting along  
18 with others. (*Id.*) She also stated that she could pay attention for less than thirty minutes  
19 and did not finish what she started. (*Id.*)

20 As explained above, the ALJ correctly pointed out that Randolph's normal objective  
21 and medical findings did not support such extreme limitations. (AR 27.) *See also Morgan*  
22 *v. Comm'r of Soc. Sec.*, 169 F.3d 595, 600 (9th Cir. 1999) ("Citing the conflict between  
23 [the claimant's] testimony of subjective complaints and the objective medical evidence in  
24 the record, the ALJ provided specific and substantial reasons that undermined [the  
25 claimant's] credibility.") Here, the ALJ relied on objective medical evidence supporting the  
26 RFC rather than Randolph's allegations of pain. Although the ALJ cannot cherry pick  
27 objective medical evidence from the record, they can consider contrary objective medical  
28 evidence in making a credibility determination. In this case, the ALJ provided a thorough

1 summary of the medical evidence for each medically determinable condition in which she  
2 highlighted specific objective findings that support the assigned RFC. (AR 27.)

3 Randolph acknowledges that the medical record does not contain records between  
4 April 2013 and May 2014 but argues that the ALJ elicited no explanation for the purported  
5 gap in treatment. The ALJ stated that the record reflected significant gaps in her treatment  
6 history, and that despite her allegation of disability since April 2013, the record revealed  
7 no evidence of any treatment until May 2014, more than a year after the alleged onset  
8 date, with only three visits in 2014. (*Id.*) There was no basis to further develop the record  
9 as to any gap in treatment, as the record was neither ambiguous nor inadequate. (ECF  
10 No. 23 at 7.) See *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001) (“An ALJ’s  
11 duty to develop the record further is triggered only when there is ambiguous evidence or  
12 when the record is inadequate to allow for proper evaluation of the evidence.”);  
13 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). Further, at the end of the  
14 hearing, the ALJ specifically asked Randolph’s counsel if the record was complete, to  
15 which the attorney responded, yes, except if the results of the 72-hour EEG were received  
16 before the ALJ reached a decision. (AR 56.) Therefore, the record before the ALJ was  
17 neither ambiguous nor inadequate to allow for proper evaluation of the evidence.

18 The ALJ also discussed Randolph’s overall routine and conservative treatment,  
19 consisting of medication. (AR 27.) See 20 C.F.R. § 404.1529(c)(3)(iv); SSR 16-3p (“[I]f  
20 the frequency or extent of the treatment sought by an individual is not comparable with the  
21 degree of the individual’s subjective complaints... we may find the alleged intensity and  
22 persistence of an individual’s symptoms are inconsistent with the overall evidence of  
23 record”); see also *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (finding  
24 conservative course of treatment suggested a “lower level of both pain and functional  
25 limitation.”). Randolph was later recommended for Botox treatment, but had previously  
26 stated that Advil, Aleve, Ibuprofen, and coffee relieved her symptoms sometimes. (ECF  
27 No. 23 at 8; see also AR 209, 421.) Further, Randolph’s prior evaluations only included  
28 medication for treatment, for which Larkin only increased the dosage one time. (AR 397.)

1 Additionally, when the prescribed medication did not work, Randolph drank coffee to  
2 alleviate her headaches (AR 49); she did not require additional testing, nor did she  
3 participate in a headache study despite her ongoing allegations of daily headaches. (ECF  
4 No. 23 at 8.) The ALJ correctly found Randolph's treatment was routine and conservative.

5 Moreover, the ALJ's considered the Disability Determination Services medical  
6 consultants, whose findings were afforded little weight as the opinions of non-examining  
7 experts. (AR 27.) Specifically, in July 2014, Dr. Toth, the initial examiner, found that there  
8 were no medically determinable physical impairments. (*Id.*, see also AR 58-63.) Likewise,  
9 on reconsideration, Dr. William Dougan found in January 2015 that the claimant's  
10 impairments were non-severe. (*Id.* at 27-28; see also AR 74-81.) However, the ALJ did  
11 find that the record supported a finding of limitations greater than those found by the non-  
12 examining experts. (*Id.* at 28.) Thus, the ALJ did not wholly discount Randolph's  
13 testimony, but instead assessed an RFC that was consistent with the record as a whole.

14 Based on the above, the Court finds the ALJ provided "specific, clear and  
15 convincing" reasons supported by substantial evidence for discounting Randolph's  
16 credibility as to her subjective limitations.

## 17 **V. CONCLUSION**

18 Having reviewed the Administrative Record as a whole and weighing the evidence  
19 that supports and detracts from the Commissioner's conclusion, the Court finds the ALJ  
20 and Appeals Council's decision was supported by substantial evidence. Therefore, the  
21 Court denies Randolph's motion to remand (ECF No. 15) and grants the Commissioner's  
22 cross-motion to affirm (ECF No. 23).

## 23 **VI. ORDER**

24 **IT IS THEREFORE ORDERED** that Randolph's motion for remand (ECF No. 15) is  
25 **DENIED**, and the Commissioner's cross-motion to affirm (ECF No. 23) is **GRANTED**; and  
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**IT IS FURTHER ORDERED** that the Clerk **ENTER JUDGMENT** and close this case.

**DATED:** January 31, 2020

  
UNITED STATES MAGISTRATE JUDGE